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JUN 27 2012
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

	)	2 CA-MH 2012-0003
	)	DEPARTMENT B
	)	
IN RE PIMA COUNTY MENTAL HEALTH NO. MH-2010-0752-2-12	)	MEMORANDUM DECISION
	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure
	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Honorable Amy Hubbell, Court Commissioner

AFFIRMED

Barbara LaWall, Pima County Attorney
By Barbara S. Burstein
Tucson
Attorneys for Appellee

Ann L. Bowerman
Tucson
Attorney for Appellant

K E L L Y, Judge.

¶1 In this appeal from the superior court's order compelling mental health treatment, appellant argues the court erred by denying her motion to dismiss the petition for court-ordered treatment. She also maintains the court erred in finding, by clear and convincing evidence, that she was "unable or unwilling to seek treatment voluntarily." For the following reasons, we affirm.

Background

¶2 In reviewing a superior court's order for involuntary treatment, we view the facts in the light most favorable to sustaining the court's findings and judgment. *In re Maricopa Cnty. Mental Health No. MH 2008-001188*, 221 Ariz. 177, ¶ 14, 211 P.3d 1161, 1163 (App. 2009). At her mother's urging, appellant went to Southern Arizona Mental Health Corporation (SAMHC) to get help. While there, she spoke with social worker Pasha Grant, who became concerned that appellant was a danger to herself and others and completed an Application for Emergency Admission for Evaluation. At a hearing on the subsequent Petition for Court-Ordered Treatment, appellant moved to dismiss the petition. The court denied her motion and subsequently ordered her to receive mental health treatment for a period of one year and authorized re-hospitalization, "should the need arise, in a level one behavioral health facility for a time period not to exceed 180 days."

Discussion

¶3 Appellant first argues that "false information" in the Application for Emergency Admission for Evaluation violated A.R.S. § 36-524(B)'s requirement that the application be based on the "observations" of the applicant and, therefore, the superior court erred by refusing to dismiss the petition for court-ordered treatment. Because involuntary commitment "may result in a serious deprivation of liberty," strict compliance with the applicable statutes is required. *In re Coconino Cnty. Mental Health No. MH 1425*, 181 Ariz. 290, 293, 889 P.2d 1088, 1091 (1995). Failure to strictly comply "renders the proceedings void." *In re Burchett*, 23 Ariz. App. 11, 13, 530 P.2d

368, 370 (1975). And the determination of "whether there has been sufficient compliance is a question of statutory interpretation, an issue of law that we review de novo." *In re Pima Cnty. Mental Health No. MH-2-10-0047*, 228 Ariz. 94, ¶ 7, 263 P.3d 643, 645 (App. 2011).

¶4 Upon making the Application for Emergency Admission for Evaluation, Grant noted that appellant was "angry and uncooperative," had said "If I don't get sleep I will kill myself or someone else," and "did not go to CRC [Crisis Response Center] where she could receive services." At a hearing on the subsequent petition for court-ordered treatment, Grant acknowledged that appellant did in fact go to the Crisis Response Center. She explained that, because she was nearing the end of her shift, she had written the application just after appellant left SAMHC. Grant then called CRC and asked them to call back if appellant did not arrive within the hour so that she or one of her colleagues could file the application. And, though appellant did go to CRC, Grant stated she had filed the application nevertheless because appellant refused to stay there for treatment. Appellant moved to dismiss the petition based on this inaccuracy. The superior court denied her motion, finding that the applicant's presence and availability for cross-examination was "the appropriate remedy" and that the substance of Grant's assertion—that appellant "would not seek services" voluntarily—was the same regardless of the wording on the application.

¶5 Appellant provides no authority to support her specific assertion that one factual mistake, which ultimately was immaterial, warrants voiding the application, let alone the entire proceedings. And the statute provides no such remedy. *See* A.R.S. § 36-

524. Furthermore, the case on which appellant relies, *In re Coconino County Mental Health No. MH 95-0074*, 186 Ariz. 138, 920 P.2d 18 (App. 1996), concerns other statutes with specific procedural requirements that were not followed—a circumstance that does not exist here. Additionally, because the superior court's decision, on the whole, required it to assess the credibility of witnesses and weigh the relative strength of their testimony in order to reach fact-based conclusions, we defer to that court. *See In re Maricopa Cnty. Mental Health No. MH 2007-001236*, 220 Ariz. 160, ¶ 15, 204 P.3d 418, 423 (App. 2008).

¶6 Appellant also asserts the superior court erred because there was insufficient evidence that she was "unable or unwilling to seek treatment voluntarily."[1] *See* A.R.S. § 36-540(A). When considering a challenge to the sufficiency of the evidence, we will affirm an involuntary treatment order if the superior court's findings are supported by substantial evidence and are not clearly erroneous. *Maricopa Cnty. No. MH 2008-001188*, 221 Ariz. 177, ¶ 14, 211 P.3d at 1163; *see also In re Maricopa Cnty. Mental Health No. MH 94-00592*, 182 Ariz. 440, 443, 897 P.2d 742, 745 (App. 1995). We do not reweigh the evidence. *In re Pima Cnty. Mental Health No. MH-2010-0047*, 228 Ariz. 94, ¶ 17, 263 P.3d 643, 647 (App. 2011).

¶7 Here, appellant's in-patient psychiatrist testified that she had not committed to taking her medication outside the hospital and he was not at all confident that she would do so. The second examining psychiatrist also testified he had a "grave concern"

[1]Appellant does not challenge the superior court's finding that she is, "as a result of a mental disorder, persistently or acutely disabled . . . and in need of a period of mental health treatment."

over her "ability to stick with treatment outpatient without the structure of court-order[ed] treatment." And there was evidence appellant had stopped taking one of her medications upon the expiration of an earlier court order just a few months prior. Substantial evidence thus supported the superior court's finding that appellant was unwilling to comply voluntarily with the treatment she required.

¶8 Furthermore, appellant's assertion that the court erroneously shifted the burden to her, requiring her to prove that she would voluntarily comply with treatment, is wholly unsupported by the record. Rather, the statement appellant challenges reflects the court's assessment and weight of the testimony presented, a function which is uniquely its own. *See Maricopa Cnty. No. MH 2007-001236*, 220 Ariz. 160, ¶ 15, 204 P.3d at 423.

Disposition

¶9 The superior court's order is affirmed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge